
By: **Senator Stone**

Introduced and read first time: March 8, 2004

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Family Law - Child Support Guidelines - Third Party Payments**

3 FOR the purpose of altering the definition of "actual income" under the child support
4 guidelines to include certain third party payments to or for a minor child;
5 requiring certain third party payments to or for a child to be set off against the
6 child support obligation under the guidelines; requiring certain third party
7 payments to or for a child that exceed the current child support obligation to be
8 credited toward existing child support arrearage; and generally relating to child
9 support guidelines.

10 BY repealing and reenacting, with amendments,
11 Article - Family Law
12 Section 12-201 and 12-204(j) through (m)
13 Annotated Code of Maryland
14 (1999 Replacement Volume and 2003 Supplement)

15 BY adding to
16 Article - Family Law
17 Section 12-204(j)
18 Annotated Code of Maryland
19 (1999 Replacement Volume and 2003 Supplement)

20 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
21 MARYLAND, That the Laws of Maryland read as follows:

22 **Article - Family Law**

23 12-201.

24 (a) In this subtitle the following words have the meanings indicated.

25 (b) "Income" means:

26 (1) actual income of a parent, if the parent is employed to full capacity; or

1 (2) potential income of a parent, if the parent is voluntarily
2 impoverished.

3 (c) (1) "Actual income" means income from any source.

4 (2) For income from self-employment, rent, royalties, proprietorship of a
5 business, or joint ownership of a partnership or closely held corporation, "actual
6 income" means gross receipts minus ordinary and necessary expenses required to
7 produce income.

8 (3) "Actual income" includes:

9 (i) salaries;

10 (ii) wages;

11 (iii) commissions;

12 (iv) bonuses;

13 (v) dividend income;

14 (vi) pension income;

15 (vii) interest income;

16 (viii) trust income;

17 (ix) annuity income;

18 (x) Social Security benefits;

19 (xi) workers' compensation benefits;

20 (xii) unemployment insurance benefits;

21 (xiii) disability insurance benefits;

22 (XIV) FOR THE OBLIGOR, ANY THIRD PARTY PAYMENT PAID TO OR
23 FOR A MINOR CHILD AS A RESULT OF THE OBLIGOR'S DISABILITY, RETIREMENT, OR
24 OTHER COMPENSABLE CLAIM;

25 [(xiv)] (XV) alimony or maintenance received; and

26 [(xv)] (XVI) expense reimbursements or in-kind payments received
27 by a parent in the course of employment, self-employment, or operation of a business
28 to the extent the reimbursements or payments reduce the parent's personal living
29 expenses.

30 (4) Based on the circumstances of the case, the court may consider the
31 following items as actual income:

1 (i) severance pay;

2 (ii) capital gains;

3 (iii) gifts; or

4 (iv) prizes.

5 (5) "Actual income" does not include benefits received from
6 means-tested public assistance programs, including temporary cash assistance,
7 Supplemental Security Income, food stamps, and transitional emergency, medical,
8 and housing assistance.

9 (d) "Adjusted actual income" means actual income minus:

10 (1) preexisting reasonable child support obligations actually paid;

11 (2) except as provided in § 12-204(a)(2) of this subtitle, alimony or
12 maintenance obligations actually paid; and

13 (3) the actual cost of providing health insurance coverage for a child for
14 whom the parents are jointly and severally responsible.

15 (e) "Combined adjusted actual income" means the combined monthly adjusted
16 actual incomes of both parents.

17 (f) "Potential income" means income attributed to a parent determined by the
18 parent's employment potential and probable earnings level based on, but not limited
19 to, recent work history, occupational qualifications, prevailing job opportunities, and
20 earnings levels in the community.

21 (g) "Ordinary and necessary expenses" does not include amounts allowable by
22 the Internal Revenue Service for the accelerated component of depreciation expenses
23 or investment tax credits or any other business expenses determined by the court to
24 be inappropriate for determining actual income for purposes of calculating child
25 support.

26 (h) (1) "Extraordinary medical expenses" means uninsured expenses over
27 \$100 for a single illness or condition.

28 (2) "Extraordinary medical expenses" includes uninsured, reasonable,
29 and necessary costs for orthodontia, dental treatment, asthma treatment, physical
30 therapy, treatment for any chronic health problem, and professional counseling or
31 psychiatric therapy for diagnosed mental disorders.

32 (i) (1) "Shared physical custody" means that each parent keeps the child or
33 children overnight for more than 35% of the year and that both parents contribute to
34 the expenses of the child or children in addition to the payment of child support.

35 (2) Subject to paragraph (1) of this subsection, the court may base a child
36 support award on shared physical custody:

1 (i) solely on the amount of visitation awarded; and

2 (ii) regardless of whether joint custody has been granted.

3 (j) "Adjusted basic child support obligation" means an adjustment of the basic
4 child support obligation for shared physical custody.

5 (k) "Basic child support obligation" means the base amount due for child
6 support based on the combined adjusted actual incomes of both parents.

7 12-204.

8 (J) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION,
9 WHEN A DISABILITY DEPENDENCY BENEFIT, A RETIREMENT DEPENDENCY BENEFIT,
10 OR OTHER THIRD PARTY DEPENDENCY BENEFIT IS PAID TO OR FOR A CHILD OF AN
11 OBLIGOR WHO IS DISABLED, RETIRED, OR IS RECEIVING BENEFITS FROM ANY
12 SOURCE AS A RESULT OF A COMPENSABLE CLAIM, THE AMOUNT OF THE
13 COMPENSATION SHALL BE SET OFF AGAINST THE CHILD SUPPORT OBLIGATION
14 CALCULATED USING THE GUIDELINES.

15 (2) (I) IF THE AMOUNT PAID TO OR FOR A CHILD EXCEEDS THE
16 CURRENT CHILD SUPPORT OBLIGATION CALCULATED USING THE GUIDELINES, THE
17 EXCESS PAYMENT SHALL BE CREDITED TO ANY EXISTING CHILD SUPPORT
18 ARREARAGE THAT ACCRUED AFTER THE EFFECTIVE DATE THE BENEFITS WERE
19 AWARDED.

20 (II) THE EXCESS PAYMENT MAY NOT BE CREDITED TO ANY FUTURE
21 CHILD SUPPORT OBLIGATION.

22 [(j)] (K) (1) Upon the expiration of a use and possession order or the
23 expiration of the right to occupy the family home under a separation or property
24 settlement agreement and upon motion of either party, the court shall review the
25 child support award.

26 (2) If the allocation of financial responsibility for the family home was a
27 factor in departing from the guidelines under subsection (a) of this section, the court
28 may modify the child support, if appropriate in all the circumstances, upon the
29 expiration of the use and possession order or the expiration of the right to occupy the
30 family home under a separation or property settlement agreement.

31 [(k)] (L) (1) Except in cases of shared physical custody, each parent's child
32 support obligation shall be determined by adding each parent's respective share of the
33 basic child support obligation, work-related child care expenses, extraordinary
34 medical expenses, and additional expenses under subsection (i) of this section.

35 (2) The custodial parent shall be presumed to spend that parent's total
36 child support obligation directly on the child or children.

37 (3) The noncustodial parent shall owe that parent's total child support
38 obligation as child support to the custodial parent minus any ordered payments

1 included in the calculations made directly by the noncustodial parent on behalf of the
2 child or children for work-related child care expenses, extraordinary medical
3 expenses, or additional expenses under subsection (i) of this section.

4 [(l)] (M) (1) In cases of shared physical custody, the adjusted basic child
5 support obligation shall first be divided between the parents in proportion to their
6 respective adjusted actual incomes.

7 (2) Each parent's share of the adjusted basic child support obligation
8 shall then be multiplied by the percentage of time the child or children spend with the
9 other parent to determine the theoretical basic child support obligation owed to the
10 other parent.

11 (3) Subject to the provisions of paragraphs (4) and (5) of this subsection,
12 the parent owing the greater amount under paragraph (2) of this subsection shall owe
13 the difference in the 2 amounts as child support.

14 (4) In addition to the amount of the child support owed under paragraph
15 (3) of this subsection, if either parent incurs child care expenses under subsection (g)
16 of this section, extraordinary medical expenses under subsection (h) of this section, or
17 additional expenses under subsection (i) of this section, the expense shall be divided
18 between the parents in proportion to their respective adjusted actual incomes. The
19 parent not incurring the expense shall pay that parent's proportionate share to:

20 (i) the parent making direct payments to the provider of the
21 service; or

22 (ii) the provider directly, if a court order requires direct payments
23 to the provider.

24 (5) The amount owed under paragraph (3) of this subsection may not
25 exceed the amount that would be owed under subsection [(k)] (L) of this section if the
26 obligor parent were a noncustodial parent.

27 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
28 October 1, 2004.